

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLOTTE CARMACK, individually	§	
and on behalf of others similarly situated,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Civil Action No. 3:16-CV-3500-D
	§	
PARK CITIES HEALTHCARE LLC,	§	
et al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION
AND ORDER

The August 24, 2022 second motion of plaintiffs/judgment creditors Charlotte Carmack, Teresa Miller, and Jovan Aniagu (collectively, “Judgment Creditors”) for an order to show cause as to why judgment debtor Sharon D. Westen (“Westen”) should not be held in contempt is denied without prejudice.

In their motion, Judgment Creditors seek only *criminal* contempt relief. *See, e.g.*, 2d Mot. for an Order to Show Cause at ¶ 10 (“The Court should consider only criminal contempt as civil contempt will not aid in rectifying the disobedience of the Court’s Order.”). But Judgment Creditors’ counsel cannot act as prosecutor in a *criminal* contempt proceeding because the Judgment Creditors are the parties who are the beneficiaries of the April 19, 2022 court order on which the alleged contempt is premised. *See Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 790, 809 (1987) (plurality opinion).

And Judgment Creditors rely in their motion on a burden of proof of clear and convincing evidence. *See, e.g.*, 2d Mot. for an Order to Show Cause at ¶ 8. But to establish criminal contempt for violation of a court order, the prosecutor must demonstrate by proof *beyond a reasonable doubt*

“(1) a reasonably specific order, (2) violation of the order, and (3) the willful intent to violate the order.” *In re Hipp, Inc.*, 5 F.3d 109, 112 (5th Cir. 1993).

Accordingly, because Judgment Creditors seek to hold Westen only in criminal contempt, their counsel is not the proper prosecutor, and they are relying on a burden of proof that applies to *civil*, not *criminal*, contempt proceedings, the court denies without prejudice their second motion for an order to show cause as to why judgment debtor Westen should not be held in contempt.

SO ORDERED.

October 4, 2022.


SIDNEY A. FITZWATER
SENIOR JUDGE